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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Elehue Kawika Freemon and)	CC Docket No. 94-89
Lucille K. Freemon,)	
)	
Complainants,)	File No. E-90-393
)	
v.)	
)	
AT&T Corp.,)	
)	
Defendant.)	

AT&T REPLY

Mark C. Rosenblum
Peter H. Jacoby
Clifford K. Williams

Attorneys for AT&T Corp.

295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4243

April 11, 1995

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Defendant.)	

AT&T REPLY

To the Review Board:

Pursuant to Section 1.277 of the Commission's Rules, 47 C.F.R. § 1.277, AT&T Corp. ("AT&T") hereby replies to the Exceptions (the "Exceptions") of Complainant Elehue K. Freemon to the Initial Decision ("Initial Decision") of Administrative Law Judge Walter C. Miller, released February 24, 1995.

Argument

Despite their considerable length and range, the Exceptions do not seriously dispute the primary and dispositive finding of the Initial Decision. As the Hearing Designation Order made clear to Judge Miller and to the parties, the Complainants had both the burden of proceeding and the burden of proof on their claims of

liability and damages.¹ The Complainants, however, produced only a single admissible document at the hearing² -- the Formal Complaint that the Common Carrier Bureau found insufficient to resolve factual issues before referring the case for hearing -- as purported proof of their claim that an AT&T operator intercepted and divulged an interstate communication, and thereby legally caused compensable harm. Given the Hearing Designation Order's directive, and the Complainants' failure to offer any additional proof at the hearing, Judge Miller was correct -- indeed, compelled -- to dismiss the Complainants' claims.

Complainants' assertion that Judge Miller should have admitted additional documents offered as part of their Direct Case is meritless. Complainants proffered three additional exhibits. Two of these exhibits contained records that had not been properly authenticated.³ The third document contained hearsay in the form of an affidavit submitted by a relative of the Complainants who was not available for cross-

¹ See Hearing Designation Order, released August 12, 1994, para. 12.

² See Initial Decision, paras. 24-26.

³ See Initial Decision, para. 26; Hearing Transcript, pp. 91, 106, and 112.

examination.⁴ Complainants did not submit these exhibits in compliance with applicable rules of evidence,⁵ and Complainants made no attempt to cure their defects during the hearing. Judge Miller was thus wholly justified in excluding each of these exhibits, and the Exceptions offer no legitimate legal ground to conclude otherwise.⁶

There is similarly no merit to the allegations of bias contained in the remainder the Exceptions. Contrary to those claims, each of the conclusions and determinations made by Judge Miller regarding credibility and motive was based on, and amply supported by, open admissions and other evidence in the record.⁷ Moreover,

⁴ See Id.

⁵ See 47 C.F.R. § 1.359. The numerous unauthorized pleadings that Complainants submit in connection with the Exceptions (e.g., Request for Participation of Edna Roland) similarly do not comply with applicable Commission Rules, and should not be considered by the Review Board.

⁶ The evidence available to Judge Miller demonstrated that Complainant Lucille K. Freemon was unaware that the complaint proceeding had been designated for hearing and believed the allegations contained the Formal Complaint to be false; that Complainant Elehue Freemon acknowledged he had no personal knowledge of the alleged interception; that Complainant Elehue K. Freemon had written a threatening letter to AT&T before filing the Formal Complaint; and that Complainant Elehue K. Freemon had knowingly submitted forged documents to Judge Miller. See Initial Decision, paras. 13, 15, 20, and 32.

⁷ See e.g., Initial Decision, paras. 12, 13, 15, 20,

nothing in the remainder of the Exceptions offers justification for the Complainant's failure to meet their burden of proof, which required dismissal of their claims.

Conclusion

For the reasons stated above, the Initial Decision of Administrative Law Judge Walter C. Miller should be affirmed.

Respectfully submitted,

AT&T CORP.

By

Clifford K. Williams 1147

Mark C. Rosenblum

Peter H. Jacoby

Clifford K. Williams

Its Attorneys

295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4243

April 11, 1995

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, hereby certify that a true copy of the foregoing "AT&T Reply" was this 11th day of April, 1995, served by first class mail, postage prepaid, upon each of the following persons:

Elehue Kawika Freemon
General Delivery
Big Bear Lake, CA 92315

Lucille K. Freemon
730 West Columbia
Long Beach, CA 90806

Joseph A. Marino,*
Chairman, Review Board
Federal Communications Commission
2000 L Street, N.W., Room 211
Washington, D.C. 20554

Marjorie R. Green*
Member, Review Board
Federal Communications Commission
2000 L Street, N.W., Room 206
Washington, D.C. 20554

Allan Sacks*
Chief for Law
Review Board
Federal Communications Commission
2000 L Street, N.W., Room 205
Washington, D.C. 20554

Leland J. Blair*
Deputy Chief for Law
Review Board
Federal Communications Commission
2000 L Street, N.W., Room 203
Washington, D.C. 20554

Thomas D. Wyatt*
Chief, Formal Complaints and
Investigations Branch
Common Carrier Bureau
Federal Communications Commission
1250 23rd Street, N.W. - Plaza Level
Washington, D.C. 20554

2

Keith Nichols, Esq.*
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20554


Ann Marie Abrahamson

* By hand delivery.